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SERVICE DATE - MARCH 26, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-545

SOUTH ORIENT RAILROAD COMPANY, LTD.—
ABANDONMENT AND DISCONTINUANCE OF TRackage RIGHTS—
BETWEEN SAN ANGELO AND PRESIDIO, TX

Decided: March 22, 1999

In a decision in this proceeding served October 6, 1998 (October 6 decision), the Board approved an application under 49 U.S.C. 10903 by the South Orient Railroad Company, Ltd. (SORC), to discontinue service over the San Angelo-Presidio line (the line) extending from milepost 722 near Mertzon station south of San Angelo to milepost 945.3 at Alpine Junction and from milepost 956.7 at Paisano Junction to the end of the line at milepost 1029.1 on the International Bridge near Presidio, a distance of approximately 296.4 miles; and to discontinue its trackage rights over the Union Pacific Railroad Company's (UP) line extending from milepost 945.3 at Alpine Junction to milepost 956.7 at Paisano Junction, a distance of 11.4 miles, for a total distance of approximately 307 miles in Brewster, Crane, Crockett, Irion, Pecos, Presidio, Reagan, Tom Green, and Upton Counties, TX. We also denied SORC's abandonment application for the San Angelo-Presidio line, holding that abandonment "is not warranted at this time." October 6 decision at 15.

On October 26, 1998, SORC filed a petition for reconsideration.¹ Also on that date, the South Orient Rural Rail Transportation District (SORRTD), a political subdivision of the State of Texas responsible for preserving essential rail transportation services, filed a petition seeking clarification. SORC and SORRTD replied to each other's petitions. Also, replies to SORC's petition were filed by the Texas Department of Transportation (TxDOT); Ferrocarril Mexicano, S.A. de C.V. (Ferromex); The Burlington Northern and Santa Fe Railway Company (BNSF);² and jointly by DinoSoil, Inc. (DinoSoil) and Geronimo Properties, Inc. (Geronimo). On December 1, 1998, SORC filed a motion to strike the filings of SORRTD, DinoSoil/Geronimo, and BNSF. SORRTD and BNSF replied. We will deny SORC's October 16 petition.

¹ Although captioned as a petition for reconsideration, SORC's appeal is actually a petition to reopen. See 49 CFR 1152.25(e)(2) and (4): "Appeals to the Board's decision in abandonment or discontinuance proceedings will not be entertained. Those decisions are administratively final upon the date they are served. . . . A person may file a petition to reopen any administratively final action of the Board."

² BNSF also requested a 30-day extension of time to file supplemental evidence.

MOTION TO STRIKE

In its motion to strike, SORC argues that comments in opposition to the abandonment and discontinuance were due on August 3, 1998. SORC submits that its “[p]etition does not confer the right to open the entire case up for another round of evidentiary submissions. . . .” SORC alleges that the submissions of SORRTD and DinoSoil/Geronimo should be stricken for containing new evidence. It claims that evidence introduced in those submissions, such as alleged lease violations, support for future traffic claims, and a business analysis, should have been made in earlier submissions. SORC also asserts that BNSF’s filing should be stricken because, allegedly, BNSF is not a party in this proceeding, having not filed a protest or comment before the record closed, and it, too, has submitted new evidence.

Replies in opposition to the motion to strike were filed by SORRTD and BNSF. They also argue that SORC’s motion to strike should be stricken as a reply to a reply. 49 CFR 1104.13(c).

The motion to strike will be denied. First, even if the evidence is considered new, it is still appropriately filed. The evidence introduced is responsive to material in SORC’s petition. The evidence in controversy largely deals with the future viability of the line, an issue raised by SORC in its petition, which claims that the abandonment should be granted because future traffic projections are speculative. Cf. Potomac Electric Power Company v. CSX Transportation, Inc., STB Docket No. 41989 (STB served Nov. 24, 1997) at 3: Our rules “do[] not bar the introduction in rebuttal of new, but responsive, evidence and argument.” (Footnote omitted.) Moreover, the abandonment process is forward looking: not only are past operating results analyzed, but, through the use of forecast year data, future operating results are also considered. See Abandonment Regulations - Costing, 5 I.C.C.2d 123, 126-27 (1988). In fact, in granting discontinuance but denying abandonment, the Board emphasized the future nature of the analysis by noting the evidence of potential traffic and stating at 15 that “[i]f traffic projections do not come to fruition, SORC can of course seek abandonment in the future.” Under these circumstances, the filings of SORRTD, DinoSoil/Geronimo, and BNSF are relevant to determining whether the proceeding should be reopened.³

OCTOBER 6 DECISION

Our decision found that the forecast year operating loss of \$720,043 indicated that the continued operation of the line would impose a significant economic burden on SORC. As to opportunity costs, we stated that it was not clear whether SORC held a viable option to purchase the

³ We will grant BNSF’s alternative request for intervention and will accept its late-filed statement of December 21, 1998. Allowing BNSF to intervene will not unduly broaden the issues in this proceeding nor unduly disrupt the schedule for filing verified statements. 49 CFR 1112.4(a). We will also deny the motions to strike of SORRTD and BNSF.

track and related assets: the option to purchase could be very valuable if in fact it is viable; without a settled right to exercise the option, however, there are no opportunity costs.

We authorized SORC's discontinuance of service because "even without considering opportunity costs, SORC cannot continue to operate the line without incurring heavy losses." October 6 decision at 14. Despite granting the discontinuance, however, we denied the abandonment request. In doing so, we focused on the potential harm to shippers, noting that two potential shippers, Hard Rock and DinoSoil, presented evidence of possible significant (approximately 14,000 annual carloads for each shipper) future traffic for the line.⁴ We also indicated that Hard Rock and DinoSoil both had invested in rail facilities at Alpine.

We also considered the free trade and North American economic integration objectives of the North American Free Trade Agreement (NAFTA). We noted that Ferromex was willing to operate the line or find a third party to provide service. Balancing all relevant factors, we thus approved the discontinuance requests, which would stop SORC's avoidable losses from operating the line, but we denied abandonment to allow interested parties time to find another operator for the line before any abandonment.

CONTENTIONS OF PARTIES

SORC

SORC claims that the Board committed material error, arguing especially that the Board's denying the abandonment while granting the discontinuance based on future traffic projections, had no evidentiary or legal support. It also argues that there was no basis for our denial of the abandonment based on the free trade objectives of NAFTA. SORC submits that the maintenance of unprofitable rail lines should be accomplished through the offer of financial assistance (OFA) process. Finally, SORC pleads that it "must be relieved of the devastating burden of retaining a dormant rail line with significant NLV and opportunity costs." It claims it "faces an imminent financial crisis" with 1997 losses of \$400,000 and overall losses of over \$6.8 million since 1991.

Future Traffic. First, SORC argues that the future traffic projections do not support denial of the abandonment application. It submits that no active local shipper or shipper of NAFTA traffic via Presidio opposed the abandonment. Instead, SORC claims that our decision was based on the projection of humate (fertilizer) traffic from two shippers - Hard Rock and DinoSoil - that do not ship anything on the line and who have received no firm contracts that would require them to ship any traffic. Such a finding, according to SORC, is contrary to the decision in CSXT Transp., Inc. v. Surface Transp. Bd., 96 F.3d 1528 (D.C. Cir. 1996) (CSXT). There, the court reversed a decision

⁴ DinoSoil anticipated moving 76 carloads every other day or 13,680 carloads annually. Hard Rock estimated that it would move 40 cars daily or approximately 10,000 carloads annually. We note that tendering 40 cars a day would actually amount to more than 14,000 cars a year.

of the Interstate Commerce Commission (ICC)⁵ that had denied an abandonment application, but allowed the carrier to apply again for abandonment in a year if projected traffic did not materialize. In reversing the Commission, the Court held, inter alia, that “there were no credible projections for rail traffic over the segment in the future. . . .” 96 F.3d at 1529 (footnote omitted). SORC claims that our attempts to distinguish this case from CSXT are inadequate. SORC argues that, while we noted the specific evidence of Hard Rock and DinoSoil traffic volumes and lease of rail facilities in denying abandonment, we also found that the evidence of new traffic was too speculative to be used to determine forecast year costs and revenues. SORC contends that “[i]t is arbitrary and capricious for the Board to then deny SORC abandonment authority - and burden SORC with even greater opportunity costs - based on the same traffic projections it properly found to be speculative in the context of determining annual operating losses.” Petition at 5 (footnote omitted).

SORC also contends that DinoSoil and Hard Rock will have rail service from the Union Pacific Railroad Company at Alpine. SORC claims that the ICC granted abandonments when the shipper had access to other rail carriers, citing CSX Transp., Inc. -- Abandonment Exemption-- in Muskegon County, MI, Docket No. AB-55 (Sub-No. 350X) (ICC served Oct. 11, 1990) (Muskegon), and Burlington Northern R.R. Co.-- Abandonment -- in Washington and Chisago Counties, MN, Docket No. AB-6 (Sub-No. 307) (ICC served June 1, 1989) (Chisago). SORC claims that denial of the abandonment will impose “over \$1 million in annual opportunity costs on a struggling Class III railroad in order to provide two inactive shippers with the luxury of two-carrier service in the unlikely event they even need rail service in the future.”

Moreover, unlike CSXT, where the ICC determined that the carrier could seek to abandon the line if traffic did not materialize within a year, SORC was not given a similar remedy. Rather, it was simply told that at some unspecified time in the future, it could request that the line be abandoned. SORC requests that we permit the reopening of this proceeding in May 1999 with an expedited schedule so that abandonment could be allowed by July 1999 if the claims of DinoSoil that it would ship 13,680 carloads by May 1999, and those of Hard Rock that 10,000 annual carloads would be shipped by July 1999, do not materialize.

NAFTA/OFA. SORC also argues that the Board claims concerning NAFTA are not supported in the record, and that no current or future need for the line to handle NAFTA traffic has been shown. SORC contends that no shipper of NAFTA traffic opposed abandonment, nor did any of the rail carriers that handle most of the cross-border traffic appear in the case. While Ferromex does oppose abandonment, SORC asserts that it only projects 9 cars a day moving via SORC and the Presidio gateway.

⁵ CSX Transportation, Inc. - Abandonment - In Barbour, Randolph, Pocahontas, and Webster Counties, WV, Docket No. AB-55 (Sub-No. 500) (ICC served July 11, 1995, and Aug. 10, 1995) (Barbour).

SORC argues that, by denying the abandonment, the Board, in essence, was permitting the San Angelo-Presidio line to be rail banked, and that such a use of an abandonment denial is impermissible under section 10903. There exists, according to SORC, a proper statutory vehicle for seeking a replacement operator to preserve the line for continued rail service: the offer of financial assistance procedures of 49 U.S.C. 10904. Accordingly, it believes that granting the abandonment will not lead inevitably to salvage.

SORRTD

Also on October 26, 1998, SORRTD filed its petition for clarification. TxDOT, in its reply to SORC's petition, voiced agreement with SORRTD's clarification request. SORRTD argues that, because it owns the track, ties, and related materials, while TxDOT owns the right-of-way, SORC cannot abandon and scrap the line. First, SORRTD argues that it is puzzled by the statement of the October 6 decision at 3 that SORC's common carrier obligation can be extinguished by either abandonment or discontinuance. SORRTD claims that, if SORC discontinues operations, the residual common carrier obligation rests with the owner of the track and, thus, "issuance of abandonment authority to SORC would be superfluous."⁶ Second, SORRTD also seeks clarification that, assuming SORC has an abandonment remedy, abandonment in this situation confers no right to salvage the track, but merely means that SORC's common carrier obligation to operate over the line is terminated.

Noting that the Board followed its established practice of refraining from considering contractual matters, SORC responded by claiming that "an appropriate state forum" - and not the Board - should resolve SORRTD's state contract and ownership issues.

REPLIES

SORRTD, in reply to SORC's petition, argues that this case differs from CSXT. This line, it claims, is not dormant since 1000 cars moved over it in 1997. Moreover, it argues that, unlike the CSXT line, this line is not at the dead end of a mountainous West Virginia segment, but connects Ferromex at the International Boundary with the American railway system. SORRTD also submits that SORC refused to make repairs on a bridge located 23 miles north of border and then placed an embargo on that part of the line. This action, according to SORRTD, foreclosed the movement of through traffic. Finally, SORRTD argues that in CSXT, the court found that the claim of future coal traffic was based on the view of a "local businessman . . . who had no ascertainable stake in the coal companies. . . ." SORRTD reply at 5. Here, SORRTD contends DinoSoil and Hard Rock have invested more than a million dollars to secure their projects.

⁶ TxDOT contends that if SORRTD were to find a replacement operator upon discontinuance, SORC's right to abandon the line would be even weaker. SORRTD appears to hold a similar position.

SORRTD argues that the Board's NAFTA concerns were justified because of the importance of the Presidio gateway. SORRTD also contends that SORC is incorrect when it claims that it is incurring substantial expense by being forced to keep the line and that it is being required, in effect to rail bank the line. SORRTD argues that SORC has been given authority to discontinue operations, and the costs of maintaining the line is the responsibility of the owners of the line, not SORC.

Ferromex is a privatized Mexican railroad that connects with SORC at Ojinaga/Presidio. It argues that SORC has not shown material error. First, Ferromex claims that the grant of discontinuance has freed SORC from the financial burden of the \$700,000 in avoidable costs it was incurring. It also argues that SORC will suffer no lost opportunity costs because it does not own either the right-of-way or the rails and ties. Ferromex asserts that there is substantial evidence in the record to support traffic projections based on the testimony of Hard Rock and DinoSoil, as well as the transborder traffic through the Ojinaga/Presidio gateway that Ferromex anticipated. Ferromex claims that the NAFTA traffic potential is significant and submits that SORC has made little effort to develop the traffic, arguing that SORC "effectively has closed the Ojinaga/Presidio gateway by not repairing the bridge at Milepost 1003.9 damaged by fire. . . ." Ferromex states that it is still interested in acquiring and operating the line, asserting that if the Board had authorized the abandonment of the line, "Ferromex would have filed a timely OFA to purchase the line."⁷

Finally, DinoSoil and BNSF, in reply to SORC's petition, responded to the future traffic issue. DinoSoil claims it has a commitment from a Philippine buyer for humate. BNSF submits that it has reached an agreement in principle with DinoSoil to move 10,000 carloads of humate annually from Alpine to San Angelo Junction for export to the Philippines. BNSF asserts that the humate shipments are to begin in February.

DISCUSSION AND CONCLUSIONS

We will deny SORC's petition, because it has not shown material error in the October 6 decision. In granting discontinuance but denying abandonment, we had to determine, under 49 U.S.C. 10903(d), whether the present or future public convenience and necessity permit the proposed abandonment or only the discontinuance of service. We examined whether the burden on SORC from continued operation was outweighed by the burden on shippers and the public parties if rail service was lost. Among the factors we considered in making this analysis were operating profit or loss, other costs to the carrier (such as opportunity cost), and the effect on communities and shippers, with no one factor being conclusive. October 6 decision at 13-14.

First, we believe that we attached appropriate weight to the claims of future traffic in the October 6 decision. While SORC believes our decision runs afoul of CSXT, we believe our

⁷ Ferromex states, however, that its main interest is in preserving SORC's entire line of railroad between Presidio and Fort Worth.

decision is consistent with it. In CSXT, the court found that the future traffic projections were based on “the idle speculations of a local businessman.” 96 F.3d at 1531. The court also noted that CSXT would be burdened by considerable opportunity costs without abandonment.

Unlike Barbour (the decision the court reviewed in CSXT), the future traffic was not used here to determine revenues: “We agree with SORC that . . . this new traffic projected to begin moving over the line in the future should not be included in our restatement of forecast year revenues and costs.” October 6 decision at 6. We concurred with SORC that the avoidable loss from operations would be \$720,043. Because of this, we found that “it is obvious that SORC cannot continue to operate the line without incurring heavy losses.” Id. at 14. We granted discontinuance “to permit SORC to curtail the avoidable losses projected by continued operations . . .” Id. at 15.

In Barbour, on the other hand, CSXT was unable to discontinue or abandon. Under the ICC analysis, the future traffic, which the court later rejected, would enable CSXT to earn an operating profit of \$259,620. (Without the traffic the profit would have been \$53,911. As noted, in this case we did not use future traffic to determine profit and loss.) Moreover, the court cited the significant opportunity costs that CSXT would incur. Here, we could not determine whether there were any opportunity costs because of the uncertainty as to whether SORC holds a viable option to the track and related materials. Accordingly, we are unable to find that SORC will suffer economic harm as a result of our decision to grant discontinuance but deny abandonment.⁸

On the other side of the equation, however, we conclude that we can consider the likelihood of future traffic in a broader context than determining the amount of the line’s operating profit or loss. The likelihood of future traffic here was not definite enough to be quantified in dollars and cents, and we thus decided that SORC should not be burdened with operating the line. On the other hand, evidence regarding future traffic can be used in weighing shipper and community interests in determining whether or not to permit abandonment. The record indicated that both Hard Rock and DinoSoil had invested in rail facilities at Alpine to use for tendering traffic to SORC. Hard Rock had made investments of more than \$1 million to move its product. DinoSoil had spent more than

⁸ SORC also argues that, while in Barbour the ICC indicated that abandonment would be granted if the anticipated traffic did not develop within a year, in this case we rejected abandonment indefinitely without requiring shippers to present traffic within a specified time. In our decision at 15, we said: “If traffic projections do not come to fruition, SORC can of course seek abandonment in the future.” SORC has requested that the proceeding be reopened in May 1999 with an expedited procedural schedule and that abandonment be granted if significant traffic has not materialized. Nothing in our decision precludes SORC from filing a new application or petition for abandonment seeking expedited relief within that time frame. Likewise, should it be resolved in arbitration or state court that SORC may exercise an option to purchase the involved track materials - and therefore would in fact incur significant opportunity costs - the Board remains open to reconsider the issue of abandonment anew.

\$400,000 to mine, move, and distribute humate. Each shipper anticipated shipping considerable amounts of traffic. This evidence is certainly more than “the idle speculations of a local businessman.” CSXT at 1531. In our view, it is appropriate to use this information in making a judgment on shipper and community interests, and we believe that our use of these data for this purpose is not inconsistent with CSXT.

Most significantly, our October 6 decision stated at 15 (footnote and citation omitted) that “[w]e are extremely concerned about maintaining adequate rail facilities and infrastructure. We are also mindful of our responsibility to ensure that our actions foster the goal of North American economic integration.” Presidio is the only railroad gateway to Mexico for the approximately 500 miles between El Paso and Eagle Pass, TX, and “the line between Presidio and Dallas-Fort Worth is the least circuitous routing between mid-America and Northern Mexico.” SORRTD reply (Nov. 16, 1998) at 8.⁹ The community and public interest in maintaining the line was enunciated by a commissioner of the Railroad Commission of Texas:

Presidio is a future gateway that holds significant promise for efficient routing of crossborder rail traffic as the northwestern part of Mexico becomes heavily industrialized over the next twenty years. V.S. of Charles R. Matthews (Aug. 3, 1998) at 2.

There is precedent, in proceedings involving the Tennessee Pass Line in Colorado, for granting a discontinuance but denying the abandonment of an important line. There, we considered the abandonment/discontinuance requests for two segments of the Tennessee Pass Line in an application and petition. The Denver and Rio Grande Western Railroad Company--Discontinuance--Malta-Canon City Line, In Lake, Chaffee, and Fremont Counties, CO, Docket No. AB-8 (Sub-No. 39), and Southern Pacific Transportation Company--Abandonment--Malta-Canon City Line, In Lake, Chaffee, and Fremont Counties, CO, Docket No. AB-12 (Sub-No. 188); and The Denver and Rio Grande Western Railroad Company--Discontinuance Exemption--Sage-Malta-Leadville Line in Eagle and Lake Counties, CO, Docket No. AB-8 (Sub-No. 36X), and Southern Pacific Transportation Company--Abandonment Exemption--Sage-Malta-Leadville Line in Eagle and Lake Counties, CO, Docket No. AB-12 (Sub-No. 189X) (Tennessee Pass proceedings). We granted the discontinuances but denied the abandonments in those proceedings.¹⁰

⁹ SORC itself points to the line’s utility, stating that it “is the most efficient route into Mexico’s North Pacific region from Fort Worth” Williams V.S. (Jun. 18, 1998) at 4. SORC claims that its Fort Worth-Presidio-Chihuahua route is 175 miles shorter than the UP route via Fort Worth-El Paso-Chihuahua and 425 miles shorter than the BNSF’s Fort Worth-Belen, NM-El Paso-Chihuahua route. Moreover, SORC asserted that border crossings at Presidio took only 4 hours, while those crossings average 4 days at El Paso. Id. at 5.

¹⁰ These proceedings were embraced in Union Pacific Corporation, Union Pacific Railroad (continued...)

The community and public interest concerns were weighed. The applicants in the merger had sought to abandon the Tennessee Pass Line because they believed it was an inefficient overhead route across the Central Corridor, and they wanted to reroute traffic over the allegedly preferable Moffat Tunnel Line. In analyzing the requests, we found in the exemption proceeding that no shipper originating or terminating traffic on the line opposed discontinuance. In the application proceeding, we determined that the avoidable losses totaled \$520,367. In light of these factors, we granted the discontinuances.

On the other hand, we denied the abandonment requests because of indications in the record that the Moffat Tunnel Line might lack the capacity to handle overhead traffic rerouted from the Tennessee Pass Line. UP/SP at 214. We denied the abandonment exemption “because of the importance of this through route,” finding that “permitting abandonment would be inconsistent with the rail transportation policy.” Id. In denying the abandonment application, we noted that “because of questions raised about the ability of the Moffat Tunnel Line to handle the rerouted overhead traffic, we cannot find that the present or future public convenience and necessity permit abandonment. . . .” Id.¹¹

SORC attempts to distinguish the Tennessee Pass proceedings, submitting that it “involved a heavily-used main line being taken out of service in the merger context” and the Presidio line has been underused even when other international rail lines to Mexico were congested. Although the Presidio line is not a main line, it is one of the least circuitous routes to Mexico and the only international rail gateway between El Paso and Eagle Pass. Although not extensively used now, it has the potential to facilitate international trade. With discontinuance granted, and the issue of opportunity costs unresolved, we can quantify no monetary harm to SORC in denying abandonment authority for a line, which, on the other hand, has potential international significance. As noted, our denial of this authority is not permanent, and SORC can seek to abandon if the projected traffic does not materialize, or it establishes its right to exercise an option to purchase the line (and is bearing opportunity costs).

We must reject the other contentions of SORC. Ferromex projections of future traffic were criticized by SORC as amounting to only 9 cars per day. Yet, Ferromex began serving the Presidio gateway in February 1998, and it is not an established gateway carrier. SORC also argues that no Mexican or American NAFTA shipper opposed the abandonment. However the record shows that

¹⁰(...continued)

Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996) at 211-14.

¹¹ We noted at UP/SP at 156 “that the inefficient Tennessee Pass Line might need to be retained just in case the Moffat Tunnel Line is overwhelmed.”

several shippers (Hirschfeld Steel, Twin Mountain Supply Co., and Kasberg Grain Company, LLC and Kasberg Gin Co., Inc.) filed verified statements requesting that the line be kept open for future international rail movements. See Protest of SORRTD, Aug. 3, 1998, Tabs D, F, and G.¹² While the Muskegon and Chisago abandonments discussed the presence of alternative rail transportation, that factor was not the sole reason for granting those abandonments. In addition, even if the alternative rail transportation at Alpine were to prove feasible, it does not resolve the problem of losing the Presidio gateway.

We must also reject SORC's contention that the OFA process, and not abandonment denial, is the appropriate way to preserve the line. Abandonment authorization is granted "only if the Board finds that the present or future public convenience and necessity require or permit the abandonment. . . ." 49 U.S.C. 10903(d). We did not make that finding here and, under the circumstances, we cannot grant an abandonment. While it is true that the line (or at least all of SORC's interest in the line) could be purchased¹³ under the OFA process if we were to find that the criteria for granting an abandonment under 49 U.S.C. 10903 had been met, the fact that an OFA purchase under 49 U.S.C. 10904 would be available if abandonment were authorized (and that this would thereby produce an additional opportunity for preservation of the line) does not justify granting the abandonment simply to provide that opportunity. Moreover, until the validity of SORC's option to purchase is established, it is not clear what rights an OFA purchaser would be seeking to obtain and from whom.

Finally, SORRTD asked that we clarify our October 6 decision. In response to its first question, we note that it would not be superfluous to grant SORC abandonment authority. Discontinuance of operations by SORC does not vest the common carrier obligation with the track owner, SORRTD. In South Orient Railroad Company, Ltd.—Acquisition and Operation Exemption—Line of The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 31971 (ICC served Sept. 2, 1992) at 3, the ICC found that SORRTD had acquired the fixed assets of the line without incurring a common carrier obligation, because SORC had "retain[ed] sufficient ability to provide unrestricted freight service as a railroad common carrier. . . ."

As to SORRTD's second question, a grant of the abandonment would end SORC's common carrier obligation over the line. By itself, it does not entitle SORC to scrap the line. Whether SORC has that right upon abandonment, as noted earlier, depends upon resolution in an appropriate state forum of SORC's claimed right to purchase the property pursuant to the option. See October 6 decision at 2 n.5.

It is ordered:

¹² There is also some question as to whether Mexican shippers received notice of the abandonment. See SORRTD reply, Nov. 16, 1998, at 7.

¹³ Purchase of the line under 49 U.S.C. 10904 (as opposed to subsidizing operations over it under that section) is available only after we have authorized an abandonment.

1. SORC's appeal is denied.
2. SORRTD's petition for clarification is granted to the extent discussed in the decision.
3. The motions to strike by SORC, SORRTD, and BNSF are denied.
4. BNSF is allowed to intervene, and its statement is accepted.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes

Vernon A. Williams
Secretary